

**Lembaga Kumpulan Wang Simpanan Pekerja Iwn Persatuan
Bola Sepak Kelantan dan lain-lain**

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MAHKAMAH TINGGI (KOTA BHARU) — RAYUAN JENAYAH
NO DA-12A-06-07 TAHUN 2017
AHMAD BACHE H
23 NOVEMBER 2018

B

*Prosedur Sivil — Pembatalan — Rayuan terhadap perintah membenarkan
pembatalan — Pembatalan tuntutan — Sama ada prinsip res judicata terpakai
— Sama ada perayu mempunyai kausa tindakan terhadap responden-responden
— Sama ada perayu tertakluk kepada Akta Had Masa 1953 — Sama ada
tuntutan perayu adalah defektif apabila menyatukan tindakan terhadap semua
responden-responden — Sama ada perayu membuat tuntutan yang jelas,
memberikan maklumat tepat dan terperinci — Sama ada doktrin 'laches'
terpakai terhadap perayu — Akta Had Masa 1953 s 6(1)(d) — Akta Kumpulan
Wang Simpanan Pekerja 1991 ss 46 & 65(1) — Kaedah-Kaedah Mahkamah
2012 A 18 k 19*

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Ini merupakan rayuan perayu terhadap keputusan mahkamah sesyen yang membatalkan tuntutan perayu. Tindakan perayu merupakan tuntutan terhadap tunggakan caruman responden-responden yang terakru daripada pelbagai tempoh sejak responden-responden kedua hingga kesepuluh yang memegang jawatan sebagai 'office-bearers'. Perayu menghujahkan bahawa tuntutan perayu tidak luput kerana mereka tidak tertakluk kepada Akta Had Masa 1953 berdasarkan perkataan 'Notwithstanding the provision of any other written law' yang terdapat di ss 65(1) dan 46 Akta Wang Simpanan Pekerja 1991 ('Akta KWSP'). Responden-responden menghujahkan bahawa: (a) prinsip res judicata terpakai dan perayu diestop daripada membuat tuntutan ini; (b) perayu tidak mempunyai kausa tindakan terhadap responden-responden; (c) tuntutan perayu ini luput kerana difailkan diluar masa; (d) tuntutan yang dibuat perayu tidak jelas dan perayu tidak memberikan maklumat yang tepat dan terperinci; dan (e) doktrin *laches* yang mana kelewatan melampau yang memprejudiskan hak responden-responden terpakai.

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Diputuskan, menolak rayuan perayu dengan kos:

- (1) Berdasarkan 'public policy', isu res judicata bukan sahaja terhad kepada isu yang telah diputuskan oleh mahkamah malahan ianya turut merangkumi isu yang telah dibawa dan tidak diputuskan oleh mahkamah. Oleh kerana isu yang ditimbulkan sebelum ini adalah isu yang sama dan telah diputuskan oleh mahkamah terdahulu, maka andai

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- A** kata penama yang menjadi pihak-pihak kepada kes ini adalah berlainan sekalipun, doktrin res judicata turut terpakai. Doktrin tersebut menghendakkan bahawa setiap tindakan di mahkamah perlu ada kemuktamatannya (lihat perenggan 16 & 22).
- B** (2) Plaintiff telah menyalahgunakan proses mahkamah dengan membawa semula isu ini untuk diputuskan oleh mahkamah sekali lagi walaupun ianya telah diputuskan sebelum ini. Mahkamah percaya plaintiff sememang sedar bahawa plaintiff masih mempunyai satu lagi ruang untuk merayu ke Mahkamah Persekutuan sekiranya tidak berpuas hati dengan keputusan Mahkamah Rayuan tersebut yang menolak rayuannya. Namun perayu memilih untuk membuat tuntutan yang baru di mahkamah ini yang mana pada pandangan mahkamah sememangnya merupakan penyalahgunaan proses mahkamah (lihat perenggan 24).
- C**
- D** (3) Perayu tiada kausa tindakan terhadap responden-responden kerana:
- E** (a) responden pertama belum lagi berdaftar sebagai sebuah Persatuan di bawah Akta Pembangunan Sukan 1997; dan (b) responden kedua hingga kesepuluh bukanlah office bearers dibawah Akta KWSP, mereka hanya memegang jawatan secara sukarela tanpa gaji dan upah di dalam pertubuhan tersebut yang tidak mengaut keuntungan. Maka adalah tidak adil untuk meletakkan responden sebagai majikan dan bertanggungjawab membuat pencaruman yang dipertikaikan ini (lihat perenggan 28 & 32).
- F** (4) Hakim bicara adalah betul apabila memutuskan bahawa tindakan perayu berada di luar masa dan Akta Had Masa 1953 adalah terpakai. Seksyen 65(1) Akta KWSP tidak jelas mengecualikan pemakaian Akta Had Masa 1953. Seksyen tersebut tidak menyebut secara spesifik mengenai pengecualian atau menyebut satu tempoh lain dan dengan itu adalah jelas Akta Had Masa 1953 terpakai (lihat perenggan 38–39).
- G** (5) Hakim bicara adalah betul dalam memutuskan bahawa tuntutan perayu adalah satu penyalahgunaan proses mahkamah dan defektif apabila menggabungkan kesemua responden-responden dalam satu tindakan semata-mata untuk memudahkan kerja perayu sedangkan fakta khusus mengenai masa dan jumlah sebenar tuntutan ke atas setiap responden adalah berbeza. Ianya jelas merupakan suatu penggabungan yang salah (lihat perenggan 41).
- H**
- I** (6) Hakim bicara adalah betul dalam memutuskan perayu gagal membuat tuntutan yang jelas. Tindakan perayu yang gagal mengemukakan jumlah sebenar tuntutan serta memasukkan sekali jumlah dividen dan faedah yang mana tidak diperuntukkan oleh Akta KWSP adalah wajar diambilkira dalam menolak tuntutan perayu sebagaimana diputuskan oleh hakim bicara. Perayu juga telah gagal memberikan notis kepada responden pertama memaklumkan jumlah baki bayaran caruman yang

tidak mencukupi. Oleh yang demikian adalah 'plain and obvious that the claim is unsustainable' (lihat perenggan 45 & 50).

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- (7) Perayu telah mengabaikan hak mereka terhadap tuntutan-tuntutan ini sejak April 1998 dan hanya kini memfailkan tuntutan yang jelas memprejudiskan responden-responden. Meskipun selepas 18 tahun, perayu masih gagal mengemukakan butir-butir terperinci tuntutan ke atas setiap responden-responden yang menunjukkan perayu tidak pernah bersedia sejak tahun 1998 lagi. Memandangkan responden pertama adalah badan amal dan responden kedua hingga kesepuluh adalah sukarelawan, adalah tidak adil jika tuntutan sebegini dibenarkan tergantung begitu lama sehingga sekarang di mana ramai antara mereka tidak lagi memegang jawatan tersebut (lihat perenggan 52 & 54).

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[English summary]

This was the appellants appeal against the decision of the sessions' court which struck out the appellant's claim. The appellant's action was a claim towards the arrears of the respondents contribution which accrued from multiple periods of time since the second to tenth respondents held the position as office bearers. The appellant submitted that the appellants application has not expired as they are not subjected to the Limitation Act 1953 based on the words 'Notwithstanding the provision of any other written law' which is contained in ss 65(1) and 46 of the Employees Provident Fund Act 1991 ('the EPF Act'). The respondents' submitted that: (a) the res judicata principle is applicable and the appellant is estopped from making this claim'; (b) the appellant does not have a cause of action against the respondents; (c) the plaintiff's claim has expired as it was filed outside of time; (d) the claim that was made by the plaintiff is unclear and the appellant did not provide accurate and detailed information; and (e) the laches doctrine where extreme delay which prejudiced the rights of the respondents was applicable.

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Held, dismissing the appellant's appeal with costs:

- (1) Public policy dictates that res judicate is not only limited to issues that were decided by the court, it includes issues which was brought before but not decided by the court. This is because issues that were previously raised and was decided by a previous court, therefore, in the event the named parties in this case is different, the doctrine of res judicata is also applicable. The said doctrine limits that all actions in the court must have its finality (see paras 16 & 22).
- (2) The plaintiff had abused the court process by bringing again this issue to be decided by the court again even though it was previously decided. The court believes that the plaintiff is verily aware that they had one more avenue to appeal to the Federal Court in the event it is not satisfied with the decision of the court of appeal's decision to dismissed it's appeal.

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- A** Instead, the appellant opted to make a new claim before this court where in the view of the court is clearly an abuse of the court's process (see para 24).
- B** (3) The appellant does not have a cause of action against the respondents because: (a) the first respondent is not yet registered as a society under the Sports Development Act 1997; and (b) the second to tenth respondent were not officer bearers under the EPF Act, there were only holding the position voluntarily without salary and pay in the said organisation which did not collect profits. Therefore it is unfair to place the respondents as employers and responsible to make contributions as contended herein (see paras 28 & 32).
- C**
- D** (4) The trial judge was correct when deciding the that appellant's action was outside of time and the Limitation Act 1953 is applicable. Section 65(1) of the EPF Act does not clearly exclude the application of the Limitation Act 1953. The said section does not specifically make reference regarding exception or state a different period and therefore is clear that the Limitation Act 1953 is applicable (see paras 38–39).
- E** (5) The trial judge was correct in deciding the appellant's claim was an abuse of the process of court and defective when consolidating all the respondents in one claim merely to ease the task of the appellant where in fact the specific facts regarding the time and the actual sum of the claim on each of the respondent is different. This is clearly a wrongful consolidation (see para 41).
- F**
- G** (6) The trial judge was correct in deciding that the appellant had failed to make a clear claim. The appellant's action which failed to state the actual sum of the claim as well as to include the sum of the interest and dividends which was not provided for by the EPF Act ought to be taken into account when dismissing the plaintiff's claim as decided by the trial judge. The appellant also failed to give notice to the first respondent informing of the total contribution sum due which was insufficient. Therefore, it was plain an obvious that the claim was unsustainable (see paras 45 & 50).
- H**
- I** (7) The appellant had neglected their rights towards this claim since April 1998 and only filed the claim now clearly prejudices the respondents. Even though after 18 years, the appellant has still failed to submitted detailed particulars on each respondent which showed that the appellant was never ready even since 1998. Taking into account the first respondent is a charitable organisation and the second to tenth respondents were volunteers, it is unfair that such a claim be left hanging for so long until now where most of them were no longer holding the said positions (see paras 52 & 54).]

Nota-nota

Untuk kes mengenai rayuan terhadap perintah membenarkan pembatalan, lihat 2(5) *Mallal's Digest* (5th Ed, 2017 Reissue) perenggan 9278.

Kes-kes yang dirujuk

- Adib bin Mokhtar & Ors v Jason Chan Chee Khong & Anor* [1999] 2 MLJ 473; [1999] 5 CLJ 555, MT (diikut)
- Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd* [1995] 3 MLJ 189, MA (dirujuk)
- Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36; [2006] 2 CLJ 1021, MA (diikut)
- Cheah Kim Tong & Anor v Taro Kaur* [1989] 3 MLJ 252, MT (dibeza)
- Credit Corporation (M) Bhd v Fong Tak Sin* [1991] 1 MLJ 409, MA (dirujuk)
- Dato' Sivananthan a/l Shanmugam v Artisan Fokus Sdn Bhd* [2016] 3 MLJ 122; [2015] 2 CLJ 1062, MR (dirujuk)
- Foo Holdings Sdn Bhd & Anor v Foo Choon Ying @ Foo Chun Yin (executor for the estate of Chen Choi Thai, the deceased)* [2013] MLJU 1638; [2013] 1 LNS 908, MT (dibeza)
- Kerajaan Malaysia v Mat Shuhaimi bin Shafiei* [2018] 2 MLJ 133; [2018] 3 CLJ 1, MP (dirujuk)
- Lembaga Kumpulan Wang Simpanan Pekerja v Suasa Kristal (M) Bhd & Ors* [2009] 8 CLJ 236, MT (dirujuk)
- Lim Kean v Choo Koon* [1970] 1 MLJ 158 (dirujuk)
- Malpac Capital Sdn Bhd v Yong Toi Mee & Ors and another appeal* [2017] 1 MLJ 262; [2016] 8 CLJ 613, MR (dirujuk)
- Seema Development Sdn Bhd v Mah Kim Chye* [2014] 2 MLJ 425; [2014] 1 CLJ 804, MT (dirujuk)

Undang-undang yang dirujuk

- Akta Cukai Pendapatan 1967 s 91
- Akta Had Masa 1953 ss 6(1)(d), (3), 8, 12
- Akta Kumpulan Wang Simpanan Pekerja 1991 ss 2, 46, 65(1), 69
- Akta Pampasan Pekerja 1952 s 12(1)
- Akta Pembangunan Sukan 1997 ss 15, 16, 17, 18
- Akta Undang-Undang Sivil 1956 s 7
- Kaedah-Kaedah Mahkamah 2012 A 18 k 19

Nota editorial: Responden-responden kes ini telah merayu kepada Mahkamah Rayuan melalui Rayuan Sivil No D-01(IM)-423-07 Tahun 2018. Pada 15 April 2019 Mahkamah Rayuan membenarkan rayuan dan mengarahkan kes dikembalikan ke Mahkamah Sesyen Kota Bharu untuk perbicaraan penuh.

Muhammad Hassanuddin bin Roslan (Azrul Afifi & Azman) bagi pihak plaintif. Rosley Izmin bin Mohamed (Irmohizam, Rosley & Nik Adli) bagi pihak responden

A *pertama, kedua, keempat, keenam, ketujuh, delapan, kesembilan dan kesepuluh.*
Wan Jawahir (Khuzaimi bersamanya) (Wan Jawahir & Takiyudin) bagi pihak responden ketiga.

B **Ahmad Bache H:**

LATAR BELAKANG

C [1] Plaintiff/perayu telah memfailkan tuntutan terhadap defendan-defendan melalui writ saman. Di atas permohonan defendan-defendan di kandungan 19, 23 dan 26 masing-masing untuk membatalkan writ saman dan penyata tuntutan plaintiff di bawah A 18 k 19, hakim mahkamah sesyen ('HMS'), telah membenarkan permohonan tersebut.

D [2] Tidak berpuas hati dengan keputusan tersebut, plaintiff/perayu telah memfailkan rayuan ke mahkamah ini. mahkamah ini setelah mendengar hujahan kedua-dua pihak, telah menolak rayuan plaintiff/perayu tersebut dan mengekalkan keputusan HMS, dengan kos sebanyak RM4,000 kepada
E responden ketiga dan RM1,000 kepada setiap responden-responden yang lain.

[3] Masih tidak berpuas hati dengan keputusan tersebut, plaintiff/perayu telah memfailkan rayuan ke Mahkamah Rayuan.

F [4] Ini merupakan alasan-alasan terhadap keputusan tersebut. Alasan penghakiman ini merangkumi kesemua responden-responden.

FAKTA KES

G [5] Plaintiff/perayu telah memfailkan tuntutan ini terhadap defendan-defendan terhadap tunggakan caruman (dinamakan caruman EPF) oleh responden-responden/defendan-defendan (*arreas in EPF contribution*). Tuntutan ini adalah tunggakan daripada jumlah yang terakru daripada
H pelbagai tempoh masing-masing sejak responden-responden kedua hingga kesepuluh memegang jawatan sebagai 'office bearers' sahaja.

I [6] Defendan-defendan/responden-responden membantah tuntutan ini dan memfailkan permohonan untuk membatalkan writ saman dan penyata tuntutan ini di bawah A 18 k 19 Kaedah-Kaedah Mahkamah 2012.

[7] Hakim mahkamah sesyen telah membenarkan permohonan pembatalan ini ('striking out').

PENGANALISAAN DAN DAPATAN MAHKAMAH INI

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[8] Untuk sesuatu permohonan sebegini dibenarkan, prinsip yang terpakai adalah sepertimana yang dinyatakan di dalam kes *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36, di mana Mahkamah Agung memutuskan seperti berikut:

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The principles upon which the court acts in exercising its power under any of the four limbs of O 18 r 19(1) of the Rules of the High Court 1980 are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule and the summary procedure can only be adopted when it can clearly be seen that a claim or answer is on the face of it 'obviously unsustainable'. It cannot be exercised by a minute examination of the documents and facts of the case in order to see whether the party has a cause of action or a defence.

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(Lihat juga kes *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36; [2006] 2 CLJ 1021).

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[9] Aturan 18 k 19 Kaedah-Kaedah Mahkamah 2012 menyatakan seperti berikut:

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Mahkamah boleh pada mana-mana peringkat prosiding memerintahkan supaya dibatalkan atau dipinda mana-mana pliding atau pengendorsan, apa-apa writ dalam tindakan itu, atau apa-apa jua dalam mana-mana pliding atau dalam pengendorsan, atas alasan bahawa:

- (i) ia mendedahkan kausa tindakan atau pembelaan yang tidak munasabah, mengikut mana-mana yang berkenaan;
- (ii) ia mengaibkan, remeh atau menyusahkan;
- (iii) ia boleh menjejaskan, menghalang atau melengahkan perbicaraan tindakan itu dengan adil; atau
- (iv) ia selainnya adalah suatu penyalahgunaan proses Mahkamah,

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dan boleh memerintahkan tindakan itu digantung atau ditolak atau penghakiman dicatatkan dengan sewajarnya, mengikut mana-mana yang berkenaan. Tiada keterangan boleh diterima atas suatu permohonan di bawah subperenggan (1)(a). Kaedah ini hendaklah, setakat mana yang boleh dipakai, terpakai bagi suatu saman semula seolah-olah saman itu adalah suatu pliding.

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[10] Mahkamah ini telah meneliti segala kertas-kertas kausa, affidavit-affidavit, keterangan-keterangan dokumentari dan lisan serta hujahan pihak-pihak, dan telah memutuskan bahawa ada merit di dalam permohonan defendan-defendan/responden-responden ini dan bersetuju dengan dapatan HMS dan mengekalkan keputusan HMS untuk membatalkan tuntutan plaintif/perayu ini berdasarkan perkara-perkara yang dihuraikan di bawah.

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A *Isu 1: Sama ada prinsip res judicata adalah terpakai ke atas perayu*

[11] Pihak defendan/responden menghujahkan bahawa prinsip res judicata terpakai dan plaintif/perayu di 'esstop' daripada membuat tuntutan ini.

- B** [12] Undang-undang di dalam kes sivil berkenaan dengan isu res judicata adalah jelas. Di dalam kes *Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd* [1995] 3 MLJ 189, Mahkamah Agung telah menerangkan dengan panjang lebar berkenaan dengan prinsip res judicata. Mahkamah ingin memetik sebahagian dari penghakiman Mahkamah Agung tersebut berkenaan makna isu res judicata ini sepertimana berikut:

- C** What is res judicata? It simply means a matter adjudged, and its significance lies in its effect of creating an estoppel per rem judicatum. When a matter between two parties has been adjudicated by a court of competent jurisdiction, the parties and their privies are not permitted to litigate once more the res judicata, because the judgment becomes the truth between such parties, or in other words, the parties should accept it as the truth; 'res judicata pro veritate accipitur'. The public policy of the law is that, it is in the public interest that there should be finality in litigation — 'interest rei publicae ut sit finis litium'. It is only just that no one ought to be vexed twice for the same cause of action — 'nemo debet bis vexari pro eadem causa'.
- D** Both maxims are the rationales for the doctrine of res judicata, but the earlier maxim has the further elevated status of a question of public policy.
- E**

- F** [13] Di dalam kes *Malpac Capital Sdn Bhd v Yong Toi Mee & Ors and another appeal* [2017] 1 MLJ 262; [2016] 8 CLJ 613, mahkamah memutuskan mengenai res judicata seperti berikut:

- G** We agree with the written submissions of learned counsel for the first and second respondents that the present round of litigation is unnecessary and is brought about by the appellant refusing to accept the judgment of the Federal Court. This is a repetition of the same ground that the appellant advanced in the review application before the Federal Court. The doctrine of res judicata should be invoked.
- H** Now, res judicata is a fundamental legal doctrine that prevents a party from relitigating any claim or defence already litigated. It is meant to ensure the finality of judgments and to conserve judicial resources whilst protecting litigants from multiple litigation involving the same claims or issues.

- I** [14] Berlandaskan kepada otoriti-otoriti di atas, res judicata secara ringkasnya bermaksud sekiranya sesuatu perkara telahpun diputuskan oleh mahkamah yang kompeten, maka pihak-pihak tidak lagi dibenarkan untuk membawa perkara yang sama ke mahkamah untuk diputuskan kerana ianya adalah bertepatan dengan kepentingan awam agar satu kemuktamatan (*finality*) perlu ditetapkan di dalam satu proses litigasi. Sekiranya pihak-pihak dibenarkan membawa perkara yang sama ke mahkamah walaupun telah

diputuskan, maka ianya akan menimbulkan ketidakstabilan di dalam sistem pentadbiran keadilan.

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[15] Mahkamah seterusnya ingin merujuk kepada petikan penghakiman di dalam kes *Asia Commercial Finance (M) Sdn Bhd*, berkenaan dengan setakat manakah had prinsip estoppel res judicata terpakai. Mahkamah Agung di dalam penghakimannya menyatakan sepertimana berikut:

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It is important to bear in mind the manner in which the issue estoppel operates in preventing such contradiction of the previous judgment ... There is one school of thought that issue estoppel applies only to issues actually decided by the court in the previous proceedings and not to issues which might have been and which were not brought forward, either deliberately or due to negligence or inadvertence, while *another school of thought holds the contrary view that such issues which might have been and which were not brought forward as described, though not actually decided by the court, are still covered by the doctrine of res judicata*, ie doctrine of estoppel per rem judicatum.

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We are of the opinion that the aforesaid contrary view is to be preferred; it represents for one thing, a correct even though broader approach to the scope of issue estoppel. It is warranted by the weight of authorities to be illustrated later. It is completely in accord or resonant with the rationales behind the doctrine of res judicata, in other words, with the doctrine of estoppel per rem judicatum. It is particularly important to bear in mind the question of the public policy *that there should be finality in litigation in conjunction with the exploding population; the increasing sophistication of the populace with the law* and with the expanding resources of the courts being found always one step behind the resulting increase in litigation.

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[16] Berdasarkan kepada petikan-petikan penghakiman di atas, mahkamah ini berpandangan bahawa berdasarkan 'public policy' isu res judicata bukan sahaja terhad kepada isu yang telah diputuskan oleh mahkamah malahan ianya turut merangkumi isu yang telah *dibawa dan tidak diputuskan oleh mahkamah*.

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[17] Setelah meneliti fakta-fakta dan keterangan saksi-saksi, mahkamah mendapati perayu pernah memfailkan tuntutan sebegini di Mahkamah Tinggi Kota Bharu pada tahun 2006 melalui Saman Sivill No 22–95 Tahun 2006 dan merayu ke atas kes yang sama di Mahkamah Rayuan pada tahun 2010 yang mana kes tersebut dibatalkan oleh Mahkamah Rayuan. Perayu tidak pernah memohon agar kes yang dibatalkan pada tahun 2010 itu disambung semula, walaupun plaintif/perayu mendakwa Mahkamah Rayuan memberi kebebasan untuk memulakan semula tindakan ini. Malahan plaintif/perayu telah memfailkan satu tuntutan baru bagi kausa tindakan yang sama mengenai fakta yang sama terhadap defendan-defendan yang sama. Ianya jelas merupakan kes yang sama yang pernah diputuskan, seterusnya menjadikan prinsip res judicata terpakai ke atas perayu.

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- A [18] Mahkamah ini ingin merujuk kepada penghakiman HMS yang telah secara terperinci menghuraikan mengenai fakta ini, di mana di ms 83–84 rekod rayuan HMS berkata:
- (d) The plaintiff's had filed an action vide civil suit No 22–95 of 2006 in the High Court at Kota Bharu based on the same facts and claim as the present one. The plaintiff had filed a notice of application for summary judgment in that suit and the application was dismissed by the deputy registrar on 7 January 2009 and among the issues raised by the defendants was that the claim was disputed. When the plaintiff failed to obtain a summary judgement before the deputy registrar, it had filed an appeal to the judge and the appeal was dismissed on 25 June 2009. When the plaintiff failed in its attempt to obtain a summary judgment, it filed an application to amend its summons and statement of claim where a different amount of claim was put in. This application was also opposed by the defendants on the issue of estoppel since at the summary judgment application stage, the plaintiff had insisted that the amount they had claimed was correct. The plaintiff's application to amend the statement of claim was dismissed by the deputy registrar on 6 September 2010 and the appeal to the judge of the High Court was dismissed on 14 November 2010. On 6 December 2010 the High Court at Kota Bharu had struck out the plaintiff's claim due to the plaintiff's failure to file bundles of document as directed by the court. The case was registered in 2006 and until 2010 the plaintiff had still failed to take any appropriate action and was not ready to have the case set down for trial with all the necessary documentation in place.
- (e) The plaintiff had appealed to the Court of Appeal against the said decision of the High Court at Kota Bharu and the appeal was dismissed by the Court of Appeal at 14 November 2012. The plaintiff did not appeal further to the Federal Court but had in 2014 filed a fresh action against the defendants and in 2016 against the same parties based on the same facts. The principle of *res judicata* applies since the case was heard on the merits at the summary judgment stage and the amendment application stage. The court finds that the plaintiff's argument that the High Court suit was struck out on technical grounds is unsubstantiated and that the doctrine of *res judicata* is applicable to this case.
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- H [19] Mahkamah ingin merujuk kepada penghakiman di dalam kes *Asia Commercial Finance (M) Sdn Bhd*, sekali lagi di mana di dalam kes tersebut Mahkamah Agong berpandangan bahawa sekiranya isu yang dibawa dan *tidak diputuskan* oleh mahkamah ianya juga terhalang melalui prinsip *res judicata*, maka apatah lagi dengan isu yang telah dibawa dan diputuskan oleh mahkamah seperti di dalam kes ini. Sudah pasti ianya juga terhalang dengan prinsip *res judicata*.
- I [20] Kes *Asia Commercial Finance (M) Sdn Bhd*, juga sekali lagi dirujuk di dalam kes *Kerajaan Malaysia v Mat Shuhaimi bin Shafiei* [2018] 2 MLJ 133; [2018] 3 CLJ 1, dimana Mahkamah Persekutuan Malaysia turut bersetuju dengan keputusan Mahkamah Agong tersebut.

[21] Seterusnya mahkamah ini berpandangan prinsip ini masih terpakai terhadap pihak-pihak yang 'non-party' daripada tindakan asal. Ini kerana Mahkamah Rayuan di dalam kes *Dato' Sivananthan all Shanmugam v Artisan Fokus Sdn Bhd* [2016] 3 MLJ 122; [2015] 2 CLJ 1062, telah memutuskan seperti berikut:

In the present appeal, since the present action would undoubtedly involve going over precisely the same facts as in the previous HTF suit, and accepting the broader approach and the wider sense of res judicata as the preferred and correct legal position, the fact that the parties to this suit are different from the HTF suit does not disentitle the appellant to invoke the doctrine of issue estoppel to bar the respondent from relitigating a specific issue that had been decided in the prior separate action. *The doctrine also applies to a non-party. It is therefore not necessary for parties to be the same in both actions. What the doctrine seeks to prevent is an abuse of the process of the court by attempting to make a double claim as well as allowing the plaintiff to relitigate its cause for the same relief and based on the same subject matter for which judgment had successfully been obtained in the HTF suit and to produce the same set of facts, the same witnesses and the same documents (see Seruan Gemilang Makmur Sdn Bhd v Badan Perhubungan UMNO Pahang Darul Makmur).*

[22] Berdasarkan kepada otoriti-otoriti di atas, mahkamah ini berpandangan bahawa oleh kerana isu yang ditimbulkan sebelum ini adalah isu yang sama dan telah diputuskan oleh mahkamah terdahulu, maka andai kata penama yang menjadi pihak-pihak kepada kes ini adalah berlainan sekalipun, doktrin res judicata turut terpakai. Doktrin tersebut menghendakkan bahawa setiap tindakan di mahkamah perlu ada kemuktamadannya.

[23] Mahkamah berpendapat bahawa berdasarkan alasan-alasan ini sahaja, maka tuntutan plaintif adalah terhalang oleh prinsip/doktrin res judicata dan seharusnya ditolak oleh mahkamah ini, dan mahkamah tidak perlu lagi melihat tuntutan ini melalui meritnya.

[24] Ke arah itu, mahkamah berpendapat bahawa pihak plaintif telah menyalahgunakan proses mahkamah dengan membawa semula isu ini untuk diputuskan oleh mahkamah sekali lagi walaupun ianya telah diputuskan sebelum ini. Mahkamah percaya plaintif sememang sedar bahawa plaintif masih mempunyai satu lagi ruang untuk merayu ke Mahkamah Persekutuan sekiranya tidak berpuas hati dengan keputusan Mahkamah Rayuan tersebut yang menolak rayuannya. Namun plaintif memilih untuk membuat tuntutan yang baru di mahkamah ini yang mana pada pandangan mahkamah sememangnya merupakan penyalahgunaan proses mahkamah.

Isu 2: Sama ada perayu mempunyai kausa tindakan terhadap responden-responden

- A** [25] Pihak defendan/responden-responden menghujahkan bahawa perayu/plaintif tidak mempunyai kausa tindakan terhadap defendan/responden-responden.
- B** [26] Mahkamah telah meneliti dapatan hakim bicara mengenai isu ini. Mahkamah berpendapat untuk mewujudkan satu kausa tindakan terhadap defendan/responden, plaintif/perayu terlebih dahulu perlu membuktikan bahawa wujudnya satu kausa tindakan terhadap defendan 1/responden 1.
- C** [27] Di dalam hal ini plaintif/perayu telah menekankan bahawa responden 1, merupakan ‘majikan’ dan telah berdaftar sebagai majikan perayu sejak 9 Ogos 1982 lagi seperti takrifan di s 2 Akta KWSP 1991. Perayu/plaintif juga menekankan bahawa Persatuan Bola Sepak Kelantan dan Persatuan Emcer Kelantan adalah merupakan entiti yang sama. Justeru itu, menurut
- D** plaintif/perayu, mereka mempunyai kausa tindakan terhadap defendan-defendan/responden-responden. Defendan/responden responden tidak bersetuju dengan perkara ini.
- E** [28] Setelah meneliti rekod rayuan dan hujahan kedua-dua pihak, mahkamah ini berpendapat, hakim bicara adalah betul di dalam memutuskan bahawa perayu tidak mempunyai kausa tindakan terhadap responden apabila defendan pertama/responden pertama belum lagi berdaftar sebagai sebuah persatuan di bawah Akta Pembangunan Sukan 1997. Malah, selain nama di dalam writ saman dan pernyataan tuntutan, tiada nama-nama lain bagi
- F** responden pertama dihidkan oleh responden.
- [29] Mahkamah ingin merujuk kepada sedutan alasan penghakiman HMS di ms 73–74 (nota: defendan 5 di dalam tindakan asal telah meninggal dunia) yang mana HMS menyatakan:
- G** (a) In order to establish a cause of action against the second to eleventh defendants, the plaintiff must first establish a cause of action against the first defendants. Paragraph 2 of the plaintiff’s statement of claim had referred to the first defendant as an association registered under the Sports Development Act 1997 (Act 576). The first defendant had not existed as an employer who makes EPF contributions for its employees in 1998, or until the valid registration date of the first defendant under the Sports Development Act 1997 (‘MC1’). When it was registered on 30 July 1998, the first pay for any of its employees would be in the month of August 1998 and the first EFP contribution would have been for the month of
- H** September 1998. Therefore the first defendant would not be in the picture for the period of April–August 1998.
- I** (b) The first defendant is not liable for any of the plaintiff’s claim at any material time since according to the plaintiff’s records, in 2001, there is only in existence Persatuan Bolasepak Emercer Kelantan, not the first

defendant, Persatuan Bolasepak Kelantan or Kelantan Football Association (KAFA) at that point in time. In 2001 the plaintiff had filed a departmental summons against Persatuan Bolasepak Emercer Kelantan, for not making EPF contributions for its players. Persatuan Bolasepak Emercer Kelantan had pleaded guilty and had paid the fine. The plaintiff had not stated in its pleadings that the first defendant was known by any other name before its registration under the Sports Development Act. The plaintiff's is bound by its pleadings and the plaintiff's averments in its affidavit-in-reply are not sufficient.

A

B

- (c) As the plaintiff had stated in para 2 of its statement of claim, the first defendant, Persatuan Bolasepak Kelantan, is an association registered under the Sports Development Act 1997, that came into force on 25 September 1997. The date of registration as pleaded by the plaintiff was 30 July 1998. Therefore the first defendant cannot be linked to any claim that was made before July 1998, for salary for the month of August 1998 and contribution for the month of September 1998. The Sports Development Act 1997, in particular s 17 (registration of sports bodies) and s 18 (certificate of registration) refers.

C

D

[30] Mahkamah ingin merujuk kepada ss 15–18 Akta Pembangunan Sukan 1997 yang menyebut mengenai pendaftaran sebagaimana berikut:

E

15(1) Every sports body shall apply to the Commissioner to be registered under this Act to carry out any sporting activity.

(2) No sports body shall carry out any of the activities referred to in subsection 25(1) until and unless it has been registered under this Act.

F

16 Any sports body registered under the Societies Act 1966 shall, on the date of coming into force of this Act cease to be registered under the Societies Act 1966 and shall, within five months thereof, apply to the Commissioner to be registered under this Act to carry out any sporting activity; and such sports body shall continue to operate as a sports body until notified otherwise by the Commissioner.

G

17 Upon an application by a sports body referred to in section 15 and 16, the Commissioner may —

- (a) register the sports body upon receipt of such fees as may be prescribed by the regulations; or
- (b) refuse to register such sports body.

H

18(1) The Commissioner, on registering a sports body under section 17 —

- (a) shall issue a certificate of registration in the prescribed form to the sports body; and
- (b) may impose such conditions as he deems fit on the sports body.

I

(2) A certificate of registration, unless proved to have been subsequently revoked, shall be conclusive evidence for all purposes that the sports body has been duly registered by the Commissioner under this Act.

A [31] Mahkamah ini berpendapat hakim bicara adalah betul dalam memutuskan bahawa responden pertama bukanlah 'association of persons' sebagaimana diperuntukkan dalam Akta KWSP 1991 tetapi hanyalah pertubuhan sukan di bawah Akta Pembangunan Sukan 1997. Ianya amat bertepatan dengan pendaftaran responden pertama di dibawah akta tersebut
B yang mana ianya merupakan sebuah pertubuhan amal yang tidak mengaut keuntungan.

C [32] Mahkamah ini juga bersependapat dengan HMS bahawa responden-responden kedua hingga kesepuluh bukanlah 'office bearers' dibawah Akta KWSP. Kesemua responden kedua hingga kesepuluh hanya memegang jawatan secara sukarela tanpa gaji dan upah di dalam pertubuhan tersebut yang tidak mengaut keuntungan. Maka adalah tidak adil untuk meletakkan responden sebagai majikan dan bertanggungjawab membuat
D pencaruman yang dipertikaikan ini.

[33] Seksyen 46 Akta KWSP menyebut seperti berikut:

E 46(1) Where any contributions remaining unpaid by a company, a firm or an association of persons, then, notwithstanding anything to the contrary in this Act or any other written law, the directors of such company including any persons who were directors of such company during such period in which contributions were liable to be paid, or the partners of such firm, including any persons who were partners of such firm during such period in which contributions were liable to be paid, or the office-bearers of such association of persons, including any persons who
F were office-bearers of such association during such period in which contributions were liable to be paid, as the case may be, shall together with the company, firm or association of persons liable to pay the said contributions, be jointly and severally liable for the contributions due and payable to the Fund.

G Manakala s 69 menyebut sebagaimana berikut:

H 69 Where an offence under this Act or any regulations or rules made thereunder has been committed by a body corporate, firm, society or other body of persons, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer or a partner of the body corporate, firm, society or other body of persons or was purporting to act in such capacity shall, as well as such
I body corporate, firm, society or other body of persons, be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

[34] Mahkamah ini seterusnya berpendapat bahawa berdasarkan s 46 Akta KWSP, defendan pertama bukanlah persatuan orang/*association of persons* sebagaimana peruntukan dalam Akta. Akta KWSP melalui s 69 tidak menekankan tanggungjawab kepada pemegang jawatan dalam pertubuhan

sukan sebagai 'office bearer' apabila menyebut 'office bearer' sebagai 'director, manager, secretary or other similar officer or a partner of the body corporate, firm, society'.

A

[35] Di atas sebab-sebab yang diuraikan di atas, mahkamah ini berpendapat bahawa pihak perayu/plaintif tidak mempunyai kausa tindakan terhadap defendan 1/responden 1 maka tuntutan plaintif terhadap responden-responden tergugur.

B

Isu 3: Sama ada perayu tertakluk kepada Akta Had Masa 1953

C

[36] Pihak defendan/responden-responden menghujahkan bahawa tuntutan perayu/plaintif ini telah luput kerana ianya difailkan di luar masa. Perayu berhujah bahawa tuntutan perayu ini tidak luput kerana mereka tidak tertakluk kepada Akta Had Masa 1953 berdasarkan perkataan 'Not with standing the provision of any other written law' yang terdapat di ss 65(1) dan 46 Akta KWSP 1991. Seksyen 6(1)(d) Akta Had Masa 1953 jelas memperuntukkan had tempoh enam tahun dari masa bermula sesuatu kausa tindakan.

D

[37] Setelah meneliti hujahan pihak-pihak, mahkamah mendapati hakim bicara adalah betul apabila memutuskan bahawa tindakan perayu ini adalah diluar masa dan Akta Had Masa 1953 adalah terpakai.

E

[38] Mahkamah ini berpendapat bahawa hujahan perayu bahawa Akta-Akta lain tidak terpakai kepada KWSP adalah suatu hujahan yang tidak dapat meyakinkan Mahkamah berdasarkan kepada s 65(1) Akta KWSP itu sendiri yang tidak jelas mengecualikan pemakaian Akta Had Masa 1953. Seksyen tersebut tidak menyebut secara spesifik mengenai pengecualian atau menyebut satu tempoh lain dan dengan itu adalah jelas Akta Had Masa 1953 terpakai. Mahkamah juga berpendapat bahawa adalah tidak *reasonable* juga Akta Had Masa 1953 tidak terpakai memandangkan kausa tindakan boleh bermula seawal setiap bulan berlakunya kelewatan. Ianya amat berbeza dengan peruntukan-peruntukan yang menyebut secara nyata dan jelas seperti ss 8 dan 12 Akta tersebut, s 7 Civil Law Act, s 91 Income Tax Act 1967 dan s 12(1) Workmen's Compensation Act 1952 yang secara jelas menyebut tempoh had masa yang tertentu.

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[39] Mahkamah ini berpendapat adalah mustahil untuk mengecualikan kesemua akta-akta yang diluluskan Parlimen untuk diterima pakai ke atas KWSP melainkan terdapat perkataan-perkataan yang jelas memperincikan sesuatu pengecualian terhadap pemakaian mana-mana akta. Mahkamah Agong di dalam kes *Credit Corporation (M) Bhd v Fong Tak Sin* [1991] 1 MLJ 409 dan kes *Lim Kean v Choo Koon* [1970] 1 MLJ 158 telah memutuskan

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A bahawa undang-undang mengenai had masa diwujudkan untuk memastikan bahawa wujudnya kemuktamatan terhadap sesuatu tindakan.

B [40] Justeru itu, mahkamah berpendapat bahawa tindakan plaintif adalah di luar masa dan di atas alasan ini sahaja ianya wajar dibatalkan.

Isu 4: Sama ada tuntutan perayu adalah salah dan defektif dan terdapat kekurangan apabila menyatukan tindakan terhadap kesemua responden-responden

C [41] Perayu telah menggabungkan tindakan terhadap kesemua responden-responden dan menurut perayu, ini dibenarkan oleh undang-undang dengan merujuk kepada kes *Lembaga Kumpulan Wang Simpanan Pekerja v Suasa Kristal (M) Bhd & Ors* [2009] 8 CLJ 236. Pihak
D responden/defendan tidak bersetuju dan menghujahkan fakta kes tersebut perlu dibezakan dengan fakta kes ini. Setelah meneliti dapatan hakim bicara, mahkamah mendapati hakim bicara adalah betul dalam memutuskan bahawa tuntutan perayu adalah satu penyalahgunaan proses mahkamah dan defektif apabila menggabungkan kesemua responden-responden dalam satu tindakan
E semata-mata untuk memudahkan kerja perayu sedangkan fakta khusus mengenai masa dan jumlah sebenar tuntutan ke atas setiap responden adalah berbeza. Ianya jelas merupakan suatu penggabungan yang salah.

F [42] Mahkamah ini bersetuju dengan dapatan HMS di mana di ms 82, rekod rayuan, HMS berkata:

G The plaintiff had combined actions that would otherwise be separated into one single action against the first to eleventh defendants. Even from the plaintiff's pleadings, the time and amount of claim for each defendant is distinct and this is without taking into consideration the other facts (particulars from which this claim had been brought) that plaintiff had failed to plead. The plaintiff had done so for its own convenience and to avoid from having to prepare separate documentation for each action since the time and amount claimed in respect of each defendant is different. The cavalier manner in which this claim is brought had greatly prejudiced the defendants.

H [43] Mahkamah juga bersetuju dengan dapatan HMS apabila HMS mengatakan 'The Plaintiff had not particularized whether the arrears in EPF contribution payments are Employee's or employer's contribution and does not have details of employees or their wages, making the Plaintiff's pleading unclear and defective'.
I

Isu 5: Sama ada perayu membuat tuntutan yang jelas, memberikan maklumat tepat dan terperinci

[44] Pihak defendan/responden-responden menghujahkan bahawa tuntutan yang dibuat oleh plaintif/perayu ini adalah tidak jelas dan perayu tidak memberikan maklumat yang tepat dan terperinci. Justeru itu, writ dan penyata tuntutan plaintif/perayu ini wajar dibatalkan.

A

[45] Setelah meneliti dapatan HMS, mahkamah ini mendapati hakim bicara adalah betul dalam memutuskan perayu gagal membuat tuntutan yang jelas serta memberikan maklumat yang jelas dan terperinci apabila tuntutan yang sama dibuat di Mahkamah Tinggi Malaya di Kota Bharu pada tahun 2006 membabitkan pekerja yang sama tetapi dengan jumlah yang berubah. Tindakan perayu yang gagal mengemukakan jumlah sebenar tuntutan serta memasukkan sekali jumlah dividen dan faedah yang mana tidak diperuntukkan oleh Akta KWSP adalah wajar diambil kira dalam menolak tuntutan perayu sebagaimana diputuskan oleh hakim bicara. Perayu juga telah gagal memberikan notis kepada responden pertama memaklumkan jumlah baki bayaran caruman yang tidak mencukupi.

B

C

D

[46] Tiada apa-apa dokumen yang menunjukkan defendan pertama sebagai majikan, gagal membayar caruman bagi tempoh April–Disember 1998. Kesemua defendan/responden tidak mempunyai pengetahuan tentang kegagalan mencarum sebagaimana tuntutan plaintif dan ianya hanyalah bersandarkan kepada notis bertarikh 23 Julai 2014. Akibatnya, tuntutan plaintif adalah tidak lengkap dan telah memprejudiskan defendan-defendan/responden-responden.

E

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[47] Ke arah itu, mahkamah ingin merujuk kepada sedutan alasan penghakiman HMS di ms 76–77 rekod rayuan, di mana beliau dengan betulnya membuat dapatan fakta seperti berikut:

- (a) The period of April 1998 to 30 July 1998 does not concern the first defendant and the first defendant is not liable at the material time (April 1998 to December 1998) or from September 1998 to December 1998 and therefore the second to eleventh defendant are also not liable.
- (b) The first defendant and second to eleventh defendants have no way of knowing from the pleadings, how the claim of arrears in EPF contribution amounting RM20,770 and RM416,999 came about. Important facts and particulars of the claim had not been pleaded. No particulars of wages/emolument of employees were stated and no details of the alleged wages/emolument of which EPF contribution were not paid for the period of April–December 1998 were given.
- (c) There are specific forms that need to be submitted every month in order to clarify what had been summarised in 'MC3'. The EPF 3 Form, proof of employees that are paid wages/emolument must be issued monthly for registration before any payment for EPF contribution could be made. The EPF 6 Form (Form B), proof of employees' and employer's contribution

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- A** will be given by EPF to the employer for contribution to be paid every month, the amount of payment is based on particulars in the EPF Form 6 Form itself. The EPF 8 Form (Form F) confirms if there is any failure of payment by the employer as per the amount and workers named in EPF 6. Rule 12, 15, 16, 22, 23 and 28 of the EPF Rules 1991 and are referred to.
- B** (d) The EPF 7 Form (Form E) that was produced by the Plaintiff is not the EPF 7 Form as required by the EPF Rules as the said Form could only be issued based on the information in EPF Form 3 (particulars of employees that receive wages from the employer). *In the absence of the said forms, the plaintiff's exh MC3 cannot be said to be prima facie evidence of the defendants' indebtedness. Each EPF contribution must be paid during the current month of employment and must be made within 21 days from the last date of the previous month.* This means that contribution for the March 1998 employment should be paid before 21 April 1998. During that period there was no failure in payment of any contribution as the Plaintiff had claimed since the Plaintiff had not taken any action for any of the material months of contribution (April–December 1998).
- C**
- D**
- (e) *In the present case, there are no documents to indicate that the employer had failed to pay contribution for the period of April–December 1998.* It follows from this that no other party, including the second to eleventh defendants would have any knowledge since the plaintiff had failed to make known to the defendants of any failure for the particular period. This claim is solely based on the notice dated 23 July 2014. There is no circumstance in which the Plaintiff can claim that the second to eleventh defendants are liable for the period of April–December 1998. The plaintiff's incomplete pleadings are prejudicial to the defendants.
- E**
- F**

[48] Di ms 80 rekod rayuan, HMS berkata:

- G** (j) In the Court at Kota Bharu, Civil Suit No 22–95 of 2006, the plaintiff had claimed against the third defendant (who was the fourth defendant in that suit) for the amount of RM89,395 for EPF contributions in 1998, but had now in the present suit claimed for the amount of RM20,770 (exhs 'TK2' and 'TK3' was referred to).
- H** (k) This shows that the plaintiff itself is not certain about its particulars of claim, hence the said particulars were not included in its pleadings. MC3 exhibited by the plaintiff further adds to the confusion since the source of the wages/emolument on which the computation was made was not made known by the plaintiff to the defendants.

- I** **[49]** Ke arah itu mahkamah ini ingin merujuk kepada keputusan yang dibuat oleh Hakim Clement Skinner di dalam kes *Adib bin Mokhtar & Ors v Jason Chan Chee Khong & Anor* [1999] 2 MLJ 473; [1999] 5 CLJ 555 seperti berikut:

There has been a consistent line of authorities to the effect that an omission or defect in a statement of claim cannot be made good by affidavit evidence. In *United*

Malayan Banking Corporation Berhad v Palm & Vegetable Oils (M) Sdn Bhd & Ors [1983] 1 MLJ 206, the Federal Court in considering an appeal arising from an application for summary judgment under O 14 of the RHC stated per Raja Azlan Shah Ag LP (as His Highness then was) that:

we cannot but observe that any defect or omission in the statement of claim cannot be made good by affidavit evidence: Gold Ores Reduction Co v Parr where Mathew J, said that 'it is most important that a defendant should know from the writ what the claim against him is'.

Yang Arif Hakim menambah, sebagaimana berikut:

I respectfully agree with the above cases in their application of the rule, especially in relation to O 18 r 19(1) of the RHC applications. For myself, I see no reason to restrict the application of the rule to applications for summary judgment only. *It is my view, that the purpose of the rule is to enforce a basic rule of pleading, namely, that a defendant is entitled to know from the outset what the claim against him is.* If that be so, it should not make a difference whether the attack to the statement of claim arises in an O 14 of the RHC or O 18 r 19(1) of the RHC situation. A further reason for applying the rule in O 18 r 19(1) of the RHC situations is to prevent the very object of pleadings as found in O 18 r 7(1) from being rendered nugatory thereby opening the way to vexatious litigation and abuse of process whereby claims or defences may be simply filed without the opposing party really knowing what is truly alleged until a challenge is mounted and only then being supplied with facts.

For the above reasons I hold that the matters stated in the affidavit of the first plaintiff cannot be relied upon to make good the omissions in the statement of claim so as to clothe the first and second plaintiffs with a cause of action against the defendants.

[50] Mahkamah ini amat bersetuju dengan dapatan ini. Di atas alasan-alasan di atas mahkamah bersetuju bahawa adalah 'plain and obvious the claim is unsustainable' (jempit lihat *Bandar Builders*) dan writ saman ini wajar dibatalkan.

Isu 6: Sama ada doktrin 'laches' terpakai terhadap tuntutan perayu

[51] Untuk menyokong permohonan defendan/responden-responden ini lagi, defendan/responden-responden telah menghujahkan bahawa doktrin *laches* terpakai. Doktrin *laches* bermaksud kelewatan melampau yang memprejudiskan pihak defendan/responden dan ianya ada kaitan dengan Akta Had Masa 1953. Perayu/plaintif sebaliknya menghujahkan doktrin ini tidak terpakai terhadap mereka kerana tindakan-tindakan mereka tidak tertakluk kepada Akta Had Masa 1953.

[52] Setelah meneliti rekod rayuan dan hujahan kedua-dua pihak, mahkamah mendapati bahawa hakim bicara adalah betul dalam memutuskan bahawa perayu telah mengabaikan hak mereka terhadap tuntutan-tuntutan ini

A sejak April 1998 dan hanya kini memfailkan tuntutan yang jelas memprejudiskan responden-responden/defendan-defendan. Meskipun selepas 18 tahun, perayu masih gagal mengemukakan butir-butir terperinci tuntutan ke atas setiap responden-responden yang menunjukkan perayu tidak pernah bersedia sejak tahun 1998 lagi.

B

[53] Di dalam kes *Seema Development Sdn Bhd v Mah Kim Chye* [2014] 2 MLJ 425; [2014] 1 CLJ 804, mahkamah menyatakan seperti berikut:

C Here it is obvious that the plaintiff through its apathy has allowed time to pass by to its detriment when s 6(3) of the Limitation Act 1953 gives more than ample time to it to pursue any and all appropriate modes of execution against the defendant. The sword of Damocles should not be allowed to hang forever above the head of the defendant when he can certainly be set free under the same s 6(3) of the Limitation Act 1953.

D There was nothing on the defendant's part that could be said to be delaying or inducing the plaintiff to delay the execution of the judgment. Hence, there was no place for the application of the equitable doctrine of estoppel to extend the strict statutory time limit of 12 years within which execution must proceed against a judgment. Although the plaintiff had attributed the delay to its solicitors, the plaintiff had not shown the steps taken to follow-up with the instructions said to be given to the solicitors. Moreover, a delay of 16 years without explanation on the events which took place during the intervening years after the first six years would not suffice.

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F [54] Apatah lagi di dalam kes ini memandangkan defendan 1/responden 1 adalah satu badan amal sukan dan defendan 2–10 merupakan sukarelawan, adalah tidak adil jika tuntutan sebegini dibenarkan tergantung begitu lama dan perkara ini sentiasa 'hanging over their head', sehingga sekarang di mana ramai di antara mereka tidak memegang jawatan tersebut lagi. Seperti mahkamah di dalam kes *Seema Development* menyatakan, 'the sword of Damocles should not be allowed to hang forever over the head of the defendant when he can certainly be set free under s 6(3) of the Limitation Act 1953'.

G

[55] Perayu/plaintif ada merujuk kepada dua kes iaitu:

H (a) *Foo Holdings Sdn Bhd & Anor v Foo Choon Ying @ Foo Chun Yin (executor for the estate of Chen Choi Thai, the deceased)* [2013] MLJU 1638; [2013] 1 LNS 908; dan

(b) *Cheah Kim Tong & Anor v Taro Kaur* [1989] 3 MLJ 252.

I Mahkamah berpendapat kedua-dua kes ini dapat dibezakan. Di dalam kes *Foo Holdings Sdn Bhd & Anor v Foo Choon Ying @ Foo Chun Yin* ia melibatkan satu perjanjian jual beli yang diakui oleh pentadbir pesaka dan urusan niaga tanah berkenaan tidak boleh dilaksanakan sebelum tanah itu didaftarkan dengan nama pentadbir/wakil dari si mati. Tindakan diambil segera setelah status

pemilikan tanah tersebut telah ditukar. Di dalam keadaan sedemikian, mahkamah memutuskan bahawa doktrin *laches* tidak terpakai walaupun telah 36 tahun perjanjian jual beli ditandatangani.

[56] Di dalam kes *Cheah Kim Tong* pula, ianya melibatkan pencerobohan tanah yang berterusan. Mahkamah telah memutuskan 'in the case of a continuing trespass, a fresh cause of acting arises from day to day'. Justeru itu, tidak timbul isu *laches* walau selama mana pun.

KESIMPULAN

[57] Setelah meneliti rekod rayuan, kertas-kertas kausa dan hujahan pihak-pihak, mahkamah ini bersetuju dengan dapatan HMS untuk membatalkan writ saman dan pernyataan tuntutan perayu berdasarkan alasan-alasan yang dinyatakan di atas dengan kos.

Rayuan perayu ditolak dengan kos.

Dilaporkan oleh Izzat Fauzan

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DALAM MAHKAMAH RAYUAN MALAYSIA
D-01 (IM) -423-07/2018
(BIDANG KUASA RAYUAN) 150.00 x 1
Jumlah RM*****150.00
RAYUAN SIVIL NO.: D-01(IM)-423-07/2018

ANTARA

LEMBAGA KUMPULAN WANG SIMPANAN PEKERJA

PERAYU

DAN

1. PERSATUAN BOLASEPAK KELANTAN (SIJIL PENUBUHAN: 0028/98)
2. AFANDI BIN HAMZAH (NO. K/P: 600511-03-5635)
3. TAKIYUDDIN BIN HASSAN (NO. K/P: 611124-02-5529)
4. MOHAMED SUHAIDI BIN MOHD YUSOFF (NO. K/P: 540303-03-5495)
5. ANUAR TAN BIN ABDULLAH (NO. K/P: 500720-71-5081)
6. AHMAD JAZLAN BIN YAAKUB NO. K/P: 640830-03-5575)
7. AZMAN BIN IBRAHIM (NO. K/P: 600901-03-5745)
8. ROSMADI BIN ISMAIL (NO. K/P: 720729-03-5765)
9. ZAHARI BIN KECHIK (NO. K/P: 600117-03-5303)
10. SHAARI BIN MAT HUSSAIN (NO. K/P: 620618-03-5115) RESPONDEN-RESPONDEN

Dalam Perkara Mahkamah Tinggi Malaya di Kota Bharu

Dalam Negeri Kelantan, Malaysia

Rayuan Sivil No.: DA-12A-06-07/2017

Antara

Lembaga Kumpulan Wang Simpanan Pekerja

Perayu

Dan

1. Persatuan Bolasepak Kelantan (Sijil Penubuhan: 0028/98)
2. Afandi Bin Hamzah (No. K/P: 600511-03-5635)
3. Takiyuddin Bin Hassan (No. K/P: 611124-02-5529)
4. Mohamed Suhaidi Bin Mohd Yusoff (No. K/P: 540303-03-5495)
5. Anuar Tan Bin Abdullah (No. K/P: 500720-71-5081)
6. Ahmad Jazlan Bin Yaakub No. K/P: 640830-03-5575)
7. Azman Bin Ibrahim (No. K/P: 600901-03-5745)
8. Rosmadi Bin Ismail (No. K/P: 720729-03-5765)
9. Zahari Bin Kechik (No. K/P: 600117-03-5303)
10. Shaari Bin Mat Hussain (No. K/P: 620618-03-5115) Responden-Responden

Dalam Perkara Mahkamah Sesyen di Kota Bharu

Guaman No.: DA-B52NCvC-4-02/2016

Antara

Lembaga Kumpulan Wang Simpanan Pekerja

Plaintif

Dan

1. Persatuan Bolasepak Kelantan (Sijil Penubuhan: 0028/98)
2. Afandi Bin Hamzah (No. K/P: 600511-03-5635)
3. Takiyuddin Bin Hassan (No. K/P: 611124-02-5529)
4. Mohamed Suhaidi Bin Mohd Yusoff (No. K/P: 540303-03-5495)
5. Mohamed Bin Idris (No. K/P: 481126-03-5533)
6. Anuar Tan Bin Abdullah (No. K/P: 500720-71-5081)
7. Ahmad Jazlan Bin Yaakub No. K/P: 640830-03-5575)
8. Azman Bin Ibrahim (No. K/P: 600901-03-5745)
9. Rosmadi Bin Ismail (No. K/P: 720729-03-5765)
10. Zahari Bin Kechik (No. K/P: 600117-03-5303)
11. Shaari Bin Mat Hussain (No. K/P: 620618-03-5115) Defendan-Defendan

KORAM:

HAMID SULTAN BIN ABU BACKER, HMR

KAMALUDIN BIN MD SAID, HMR

LAU BEE LAN, HMR

PADA 15 APRIL 2019

DALAM MAHKAMAH TERBUKA

PERINTAH

RAYUAN INI ditetapkan untuk pendengaran pada hari ini dalam kehadiran Afifi Bin Ahmad (Nurul Huda Binti Razali bersamanya) peguam bagi pihak Perayu dan Norah Bt Abu Bakar peguam bagi pihak Responden Pertama dan Kedua dan Wan Jawahir Binti Harun (Nur Nasyihin Binti Mohd Salleh bersamanya) peguam bagi pihak Responden Ketiga dan Syarifah Nafidza Binti Syed Mahamud peguam bagi pihak Responden Keenam dan Mohd Ruzaini Bin Zulkifli (Azwan Bin Mat Hussain bersamanya) peguam bagi pihak Responden Keempat, Ketujuh, Kelapan, Kesembilan, Kesepuluh dan Kesebelas **DAN SETELAH MEMBACA** Rekod Rayuan yang difailkan di sini **DAN SETELAH MENDENGAR** hujahan peguam bagi pihak Perayu, Responden Pertama, Kedua, Keempat, Keenam, Ketujuh, Kelapan, Kesembilan, Kesepuluh dan Kesebelas dan peguam bagi pihak Responden Ketiga

tiada bantahan terhadap rayuan ini **MAKA ADALAH DENGAN SEBULAT SUARA DIPERINTAHKAN** bahawa :-

- a) Rayuan dibenarkan;
- b) Kes dikembalikan ke Mahkamah Sesyen Kota Bharu untuk perbicaraan penuh; dan
- c) Tiada perintah terhadap kos.

DIBERI di bawah tandatangan Saya Meterai Mahkamah pada 15 April, 2019.



MARLISSA BINTI MOHD FAHMY
Penolong Kanan Pendaftar
Mahkamah Rayuan
**PENOLONG KANAN PENDAFTAR /
TIMBALAN PENDAFTAR
MAHKAMAH RAYUAN MALAYSIA
PUTRAJAYA**



Perintah ini difailkan oleh **Tetuan Azrul Afifi & Azuan**, peguamcara bagi pihak Perayu tersebut, yang beralamat di B-5-1, Block B, Megan Avenue 1, 189 Jalan Tun Razak, 50400 Kuala Lumpur. **Tel: 03-2166 6018 Faks: 03-2166 6019**
Email: liti@azrulafifiazuan.com [Ruj: 1-20793-X/15-02 (huda/mia)]